

# **EXHIBIT K**

**Wednesday, July 4, 2018 at 1:19:38 PM Eastern Daylight Time**

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**Subject:** Re: UMG Recordings et al. v. Grande Communications Networks LLC - Meet and Confer [IWOV-iDocs.FID3130226]

**Date:** Friday, December 29, 2017 at 8:32:05 PM Eastern Standard Time

**From:** Phil O'Beirne

**To:** Maggie Szewczyk, Zachary C. Howenstine, Robert B. Gilmore, Richard L. Brophy

**CC:** Jonathan E. Missner

**Attachments:** image001.jpg

Counsel,

I write to address various ongoing issues with Defendants discovery efforts in this matter.

### **1. Defendants' Document Production**

In our previous discussion regarding the scope of Defendants' recent production, you explained that Defendants were producing documents responsive to Plaintiffs' proposed search terms from both Patriot and Grande custodians. Yet the load file provided by Defendants did not include various basic fields, including a "Custodian" metadata field, making it impossible to determine the provenance of the produced documents.

Please provide an updated load file no later than Wednesday, January 3, with the proper metadata included as detailed in Plaintiffs requests for production.

### **2. Defendants' Interrogatory Responses**

We understand from your email of this afternoon that Defendants will not be providing today verified interrogatories from Patriot or updated responses from Grande as promised in your email of December 19, 2017. As we discussed on our call that same day, this failure to provide timely updates and responses, despite express promises to do so, has become a pattern in this case and continues to prejudice Plaintiffs.

#### **a. Lack of Verification**

Our email of December 6 pointed out that Grande's Third Amended Interrogatory Responses of November 24 were (inexplicably) not verified. They remain unverified more than three weeks later.

#### **b. Deficient Responses**

More importantly, Grande's Third Amended Responses were necessitated by the Court's rejection of Grande's position that it need not provide responses to interrogatories that relate to a DMCA defense. Yet Grande's Third Amended responses fail to provide sufficiently detailed or responsive answers.

##### **i. Interrogatory 11**

For example, Interrogatory 11 asks that Grande "State the number of your Customers or Users that Grande has terminated for violation of the Acceptable Use Policy, organized by the provision of the Acceptable Use Policy the violation of which caused the Customer's or User's suspension or termination. Organize Customers or Users terminated for violating more than one provision by the grouping of provisions violated (i.e. X number of Customers or Users terminated for violation of provisions A and B, X number for provisions B and C, etc.)."

This interrogatory is plainly relevant to numerous issues in this case, including but not limited to Grande's claimed implementation of a DMCA policy. Yet Grande's answer completely ignores the information sought by the question, and instead merely states that Grande has allegedly terminated "at least eleven subscribers based on allegations of repeat copyright infringement." This does not comply with the requirements of Rule 33 or the Court's order. Grande must provide a full narrative answer with the information actually sought by Interrogatory 11.

#### **ii. Interrogatory 7**

Grande's response to Interrogatory 7 is also deficient on its face. That Interrogatory asks Grande to describe the notices it has received from any source regarding alleged copyright infringement by a user of Grande's system, including a tally of notices received by month. Grande's sole substantive response is to note that it claims to have produced these notices.

**First**, a review of Grande's production to date indicates that the text files produced do not include all notices received by Grande. Many have apparently corrupted or otherwise unreadable data. Grande cannot point to a partial production of documents as satisfying its obligation to provide narrative responses to Plaintiffs' interrogatories.

**Second**, Grande's own documents reveal that the information sought by Interrogatory 7 can be easily obtained and provided to Plaintiffs. Documents produced by Grande at Bates GRANDE1438199 and GRANDE1435539, for example, reflect Grande's internal discussions regarding infringement notices received and evidence an ability to generate reports, including with data sorted by time-period and source of the notice. Grande must use this easily accessible system to provide the information requested by Plaintiffs.

Plaintiffs insist that Grande's forthcoming Fourth Amended responses, apparently to be expected on January 2, in addition to the updates reflected in your email below, also contain fulsome answers to these and all pending interrogatories.

### **3. Deposition Dates**

Plaintiffs continue to review Grande's production to determine whether additional deficiencies exist. In the time being, Plaintiffs request proposed dates beginning the first week of February for the deposition of the following individuals: Jeff Kramp, Rob Roeder, Deborah Rankin, Lamar Horton, Matt Murphy and Matt Rohre.

Best Regards,

**Philip J. O'Beirne**

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\*\*\*\*\*  
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\*\*\*\*\*

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**From:** Maggie Szewczyk <MSzewczyk@ArmstrongTeasdale.com>

**Date:** Friday, December 29, 2017 at 5:29 PM

**To:** "Zachary C. Howenstine" <ZHowenstine@ArmstrongTeasdale.com>, Robert Gilmore

<RGilmore@steinmitchell.com>, "Richard L. Brophy" <RBrophy@ArmstrongTeasdale.com>

**Cc:** Phil O'Beirne <POBeirne@steinmitchell.com>, Jon Missner <JMissner@steinmitchell.com>

**Subject:** RE: UMG Recordings et al. v. Grande Communications Networks LLC - Meet and Confer  
[IWOV-iDocs.FID3130226]

Rob/Phil,

As an update on the responses in the below email, we will be providing supplemental answers next week, most likely on Tuesday the 2<sup>nd</sup>. Due to the holidays, we will be unable to provide verified answers today. Apologies for the delay.

Thanks,  
Maggie



Armstrong  
Teasdale

Armstrong Teasdale LLP

**Maggie Szewczyk** | Attorney – IP Litigation  
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**From:** Zachary C. Howenstine

**Sent:** Tuesday, December 19, 2017 11:04 AM

**To:** Robert B. Gilmore; Richard L. Brophy

**Cc:** Maggie Szewczyk; Phil O'Beirne; Jonathan E. Missner

**Subject:** RE: UMG Recordings et al. v. Grande Communications Networks LLC - Meet and Confer

Rob/Phil,

Further to our discussion today, responses to individual items are set out in red below.

Zach



Armstrong Teasdale LLP

**Zachary C. Howenstine**

DIRECT: 314.342.4169 | FAX: 314.613.8588 | MAIN OFFICE: 314.621.5070

**From:** Robert B. Gilmore [<mailto:RGilmore@steinmitchell.com>]

**Sent:** Wednesday, December 06, 2017 12:12 PM

**To:** Richard L. Brophy

**Cc:** Maggie Szewczyk; Zachary C. Howenstine; Phil O'Beirne; Jonathan E. Missner

**Subject:** UMG Recordings et al. v. Grande Communications Networks LLC - Meet and Confer

Counsel:

I write to follow up on our discovery meet and confer telephone call from yesterday.

1. You indicated that Grande and Patriot would be making a substantial email production no later than next Monday, December 11. While we accept your representation that Defendants will do so, we note that Defendants repeatedly have failed to produce documents by the dates on which they said they would. Therefore, Plaintiffs will move to compel email production if we do not receive the promised production on Monday.

Previously resolved.

2. You also indicated that Defendants are actively gathering for production responsive deal documents concerning actual or contemplated transactions with ABRY, TPG, Wave and RCN. We also need Grande and Patriot to commit to producing no later than December 22, or we will move to compel document production of those documents as well.

We will be responding separately on this item.

I also write to address several deficiencies in the amended interrogatory responses that Grande served on November 24. In addition, we have not received amended responses from Patriot on corresponding interrogatories. Please provide those without further delay.

Plaintiffs agreed to either identify the specific interrogatories for which they believe Patriot is obligated to provide supplemental answers, or to identify prior correspondence that includes that information. Subject to any disagreement on that front, Patriot generally agrees to provide supplemental answers no later than December 29.

1. The amended responses continue to assert and incorporate general objections. The Court struck those objections. Please confirm that other than privilege or work product, Defendants are not relying on general objections to withhold any otherwise responsive information or documents.

Confirmed.

2. The amended responses were not verified. Please provide a signed verification without further delay.

We expect to provide verified responses this week.

3. The amended responses were marked attorneys' eyes only. Yet we do not believe that the information they contain warrants that protection, for substantially the same reasons that the Court denied Defendants' motion for a protective order to maintain its initial production as AEO. Please withdraw the designation (Plaintiffs agree they can be treated as Confidential instead).

Defendants agree to the Confidential designation.

4. Grande must supplement its response to Interrogatory No. 5 to identify (by Bates number) the notices of alleged copyright infringement that it has received from Rightscorp, from 2010 to the present.

The parties agreed to discuss other potential solutions with their respective clients and to report back.

5. In its amended response to Interrogatory No. 8, Grande continues to assert that copyrights beyond those that Plaintiffs claim were infringed are not relevant to this case. That is incorrect: Grande's response or lack of response to notices of infringement generally goes directly to its knowledge and to whether or not it can claim the DMCA safe harbor protections, and Plaintiffs' copyrights not yet included in the Complaint are also plainly relevant. You have conceded this in prior discovery conferences, at oral argument, and in Grande's production of notices received relating to other copyrights. Please confirm, as we thought you had previously, that Grande is not withholding information or documents on the ground that such information and documents pertain to other copyrights beyond the works in suit.

Confirmed.

6. The Court ordered Grande to respond to Interrogatory No. 11. Yet Grande's response is lacking in several respects:

- a. The response refers to "the entire period relevant to this dispute" yet fails to specify what that time period is. Please provide us with the actual dates for the time period to which Grande's response refers.

Grande answered as to the 3-year statutory damages period, dating back from the filing of the complaint, as the period relevant to the applicability of the DMCA safe harbor.

- b. The response also states "Grande has also informed its subscribers and account holders of its copyright infringement and termination policies" but offers no explanation as to how or when those policies are communicated to subscribers and account holders. Please provide that information.

Grande will provide a supplemental answer no later than December 29.

7. In its amended response to Interrogatory No. 13, Grande states that it no longer has the final hard copy letters it claims it sent to its customers about whom Grande received notices of alleged infringement. Please supplement this answer to (a) explain why Grande lost or destroyed copies of such letters it claims to have sent, as well as the last date on which Grande possessed such copies, and (b) identify whether Grande possesses and has produced electronic versions of the hard copy letters it claims it sent (with Bates numbers of produced versions of such documents).

We explained that hard copy documents were destroyed in a flood in 2015. We are investigating other potential avenues to obtaining copies of actual letters sent.

8. In its amended response to Interrogatory No. 15, Grande interposes privilege and work product objections to answering beyond identifying its supposed DMCA policy and the date on which Grande claims it was promulgated. Those objections are improper. At a minimum, Grande must supplement this answer to identify and describe "any differences in how Grande has handled complaints of infringement under this document as compared with how such complaints were handled prior to its institution" as the Interrogatory requests. There is no basis for Grande to withhold such information, which concerns its **conduct** in response to complaints from outside parties about Grande's customers and subscribers' copyright infringement, both before and after the claimed DMCA policy supposedly was implemented in February 2017.

Grande will provide a supplemental answer no later than December 29 regarding "any differences in how Grande has handled complaints of infringement under this document as compared with how such complaints were handled prior to its institution," for the 3-year statutory damages period.

We are available to discuss any of these points further with you.

Regards,  
Rob Gilmore

**Robert B. Gilmore**  
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**From:** Richard L. Brophy [<mailto:RBrophy@ArmstrongTeasdale.com>]  
**Sent:** Thursday, November 30, 2017 9:09 AM  
**To:** Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)>  
**Cc:** Maggie Szewczyk <[MSzewczyk@ArmstrongTeasdale.com](mailto:MSzewczyk@ArmstrongTeasdale.com)>; Zachary C. Howenstine <[ZHowenstine@ArmstrongTeasdale.com](mailto:ZHowenstine@ArmstrongTeasdale.com)>; Phil O'Beirne <[POBeirne@steinmitchell.com](mailto:POBeirne@steinmitchell.com)>; Jonathan E. Missner <[JMissner@steinmitchell.com](mailto:JMissner@steinmitchell.com)>  
**Subject:** Re: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

Let's shoot for Tuesday morning. We will circulate a calendar invite shortly.

Thanks,  
Richard

On Nov 30, 2017, at 8:08 AM, Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)> wrote:

I'm available either day. Monday afternoon or Tuesday morning is best.

Sent from my iPhone

On Nov 30, 2017, at 9:00 AM, Richard L. Brophy <[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)> wrote:

Rob,

I think it would make sense for us to schedule a call to address a number of issues, including those identified below.

Are you available early next week (Monday or Tuesday)?

Thanks,  
Richard

<image001.jpg>  
Armstrong Teasdale LLP  
**Richard L. Brophy** | Partner - IP Litigation  
DIRECT: 314.342.4159 | FAX: 314.613.8579 | MAIN OFFICE: 314.621.5070 | CELL: 314.566.5117

---

**From:** Robert B. Gilmore [<mailto:RGilmore@steinmitchell.com>]  
**Sent:** Thursday, November 30, 2017 7:39 AM  
**To:** Maggie Szewczyk; Richard L. Brophy  
**Cc:** Zachary C. Howenstine; Phil O'Beirne; Jonathan E. Missner  
**Subject:** RE: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

Also, we need an update from you on producing documents in response to our third party subpoenas. Absent a firm commitment that you will be producing documents responsive to the subpoenas' requests, from either the Defendants in the first instance, or from the third parties themselves, and a date certain for that production, we will need to raise this issue with the Court.

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**From:** Robert B. Gilmore  
**Sent:** Wednesday, November 29, 2017 6:12 PM  
**To:** 'Maggie Szewczyk' <[MSzewczyk@ArmstrongTeasdale.com](mailto:MSzewczyk@ArmstrongTeasdale.com)>; Richard L. Brophy <[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)>

**Cc:** Zachary C. Howenstine <[ZHowenstine@ArmstrongTeasdale.com](mailto:ZHowenstine@ArmstrongTeasdale.com)>; Phil O'Beirne <[pobeirne@steinmitchell.com](mailto:pobeirne@steinmitchell.com)>; Jonathan E. Missner <[JMissner@steinmitchell.com](mailto:JMissner@steinmitchell.com)>  
**Subject:** RE: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

Richard, Maggie, Zach – hope you all had a good Thanksgiving holiday. Can you please confirm that Defendants will be making their production of documents this week?

**Robert B. Gilmore**  
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**From:** Maggie Szewczyk [<mailto:MSzewczyk@ArmstrongTeasdale.com>]  
**Sent:** Friday, November 24, 2017 12:28 PM  
**To:** Richard L. Brophy <[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)>; Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)>  
**Cc:** Zachary C. Howenstine <[ZHowenstine@ArmstrongTeasdale.com](mailto:ZHowenstine@ArmstrongTeasdale.com)>; Phil O'Beirne <[pobeirne@steinmitchell.com](mailto:pobeirne@steinmitchell.com)>; Jonathan E. Missner <[JMissner@steinmitchell.com](mailto:JMissner@steinmitchell.com)>  
**Subject:** RE: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

Counsel,

Attached please find our amended interrogatory answers, along with several attachments referenced throughout. Due to the holiday, we had difficulties in having documents marked for production, so please note the attached excel spreadsheet is marked as Confidential. This and the other attachments will be bates labeled as well.

Thanks,  
Maggie

<image001.jpg>  
Armstrong Teasdale LLP  
Maggie Szewczyk | Attorney – IP Litigation  
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**From:** Richard L. Brophy  
**Sent:** Friday, November 24, 2017 8:08 AM

**To:** Robert B. Gilmore  
**Cc:** Zachary C. Howenstine; Phil O'Beirne; Maggie Szewczyk; Jonathan E. Missner  
**Subject:** Re: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

Rob,

We will have amended interrogatory answers to you today.

Thanks,  
Richard

On Nov 20, 2017, at 8:57 AM, Robert B. Gilmore

[<RGilmore@steinmitchell.com>](mailto:RGilmore@steinmitchell.com) wrote:

Counsel – we also have yet to receive the Court-ordered updated interrogatory responses. Please confirm that Defendants will comply with the Court's order by providing us with such updated responses by this Wednesday.

Regards,  
Rob

**Robert B. Gilmore**  
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**From:** Robert B. Gilmore  
**Sent:** Friday, November 17, 2017 7:50 PM  
**To:** 'Zachary C. Howenstine' <[ZHowenstine@ArmstrongTeasdale.com](mailto:ZHowenstine@ArmstrongTeasdale.com)>  
**Cc:** Phil O'Beirne <[pobeirne@steinmitchell.com](mailto:pobeirne@steinmitchell.com)>; Richard L. Brophy <[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)>; Maggie Szewczyk <[MSzewczyk@ArmstrongTeasdale.com](mailto:MSzewczyk@ArmstrongTeasdale.com)>; Jonathan E. Missner <[JMissner@steinmitchell.com](mailto:JMissner@steinmitchell.com)>  
**Subject:** RE: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

Zach, that approach on the designations is fine with us.

We also are waiting to hear from you on the third party subpoenas. As we discussed on our call, we are seeking documents that the third parties have relating to Grande and Patriot, in particular documents generated or communicated in connection with the transactions or contemplated transactions involving Grande. Previously, Richard had proposed that Grande and Patriot would be producing such documents, and that once they did, Plaintiffs review those documents to see if there were remaining materials that they still needed from the third parties. But for any of that to happen, we do need the

documents from Grande and Patriot. You indicated that this upcoming production would not include such documents. Please advise us when Grande and Patriot will be producing the deal-related documents in their possession, custody and control.

Regards,  
Rob

**Robert B. Gilmore**  
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**From:** Zachary C. Howenstine  
[mailto:[ZHowenstine@ArmstrongTeasdale.com](mailto:ZHowenstine@ArmstrongTeasdale.com)]  
**Sent:** Friday, November 17, 2017 3:49 PM  
**To:** Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)>  
**Cc:** Phil O'Beirne <[POBeirne@steinmitchell.com](mailto:POBeirne@steinmitchell.com)>; Richard L. Brophy <[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)>; Maggie Szewczyk <[MSzewczyk@ArmstrongTeasdale.com](mailto:MSzewczyk@ArmstrongTeasdale.com)>; Jonathan E. Missner <[JMissner@steinmitchell.com](mailto:JMissner@steinmitchell.com)>  
**Subject:** RE: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

Rob,

Further to our discussion earlier this week, I'm writing concerning the email production we will be sending out in the near future, most likely on Monday. As discussed, the production is extremely large, such that it's not practical to review individual documents for appropriate confidentiality designations. As a result, we intend to designate the entirety of the production Confidential, while reserving the right to amend individual designations to AEO in appropriate cases. We understand that Plaintiffs will be entitled to treat the documents as Confidential until any such change in designation is made.

Please confirm that Plaintiffs do not have any disagreement with this approach.

Thanks,

Zach

<image001.jpg>  
Armstrong Teasdale LLP  
**Zachary C. Howenstine**  
DIRECT: 314.342.4169 | FAX: 314.613.8588 | MAIN OFFICE: 314.621.5070

---

**From:** Robert B. Gilmore [mailto:[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)]

**Sent:** Friday, November 10, 2017 11:28 AM  
**To:** Zachary C. Howenstine  
**Cc:** Phil O'Beirne; Richard L. Brophy; Maggie Szewczyk; Jonathan E. Missner  
**Subject:** RE: Meet and Confer Next Week [IWOV-iDocs.FID3130226]

That works for us, thanks.

**Robert B. Gilmore**  
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**From:** Zachary C. Howenstine  
[<mailto:ZHowenstine@ArmstrongTeasdale.com>]  
**Sent:** Friday, November 10, 2017 11:27 AM  
**To:** Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)>  
**Cc:** Phil O'Beirne <[POBeirne@steinmitchell.com](mailto:POBeirne@steinmitchell.com)>; Richard L. Brophy <[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)>; Maggie Szewczyk <[MSzewczyk@ArmstrongTeasdale.com](mailto:MSzewczyk@ArmstrongTeasdale.com)>; Jonathan E. Missner <[JMissner@steinmitchell.com](mailto:JMissner@steinmitchell.com)>  
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Rob,

Monday should work. We propose 10am central – please confirm and I'll circulate an invite. If that doesn't work, please suggest some other possible times.

Thanks,

Zach

<image001.jpg>  
Armstrong Teasdale LLP  
**Zachary C. Howenstine**  
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---

**From:** Robert B. Gilmore [<mailto:RGilmore@steinmitchell.com>]  
**Sent:** Friday, November 10, 2017 11:24 AM  
**To:** Zachary C. Howenstine  
**Cc:** Phil O'Beirne; Richard L. Brophy; Maggie Szewczyk; Jonathan E. Missner  
**Subject:** RE: Meet and Confer Next Week

Zach – are you available for a call at some point today? If not, we need to get something booked for the early part of next week.

Thanks

**Robert B. Gilmore**

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**From:** Zachary C. Howenstine  
[mailto:[ZHowenstine@ArmstrongTeasdale.com](mailto:ZHowenstine@ArmstrongTeasdale.com)]  
**Sent:** Tuesday, November 07, 2017 12:09 PM  
**To:** Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)>  
**Cc:** Phil O'Beirne <[POBeirne@steinmitchell.com](mailto:POBeirne@steinmitchell.com)>; Richard L. Brophy <[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)>; Maggie Szewczyk <[MSzewczyk@ArmstrongTeasdale.com](mailto:MSzewczyk@ArmstrongTeasdale.com)>; Jonathan E. Missner <[JMissner@steinmitchell.com](mailto:JMissner@steinmitchell.com)>  
**Subject:** Re: Meet and Confer Next Week

Rob,

We are in the process of figuring out some times that would work, and will get back to you soon.

Thanks,

Zach

On Nov 7, 2017, at 9:15 AM, Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)> wrote:

Richard, Maggie, and Zach –

We wanted to follow up on the below request for a meet and confer call this week on open discovery matters. Please let us know some times when you are available for such a call. In particular, we wanted to discuss email discovery matters, and the status of responses from the third parties who we subpoenaed.

Regards,  
Rob

**Robert B. Gilmore**  
**Stein Mitchell Cipollone Beato & Missner LLP**  
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[www.steinmitchell.com](http://www.steinmitchell.com)

**From:** Phil O'Beirne  
**Sent:** Wednesday, November 01, 2017 5:11 PM  
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Robert B. Gilmore <[RGilmore@steinmitchell.com](mailto:RGilmore@steinmitchell.com)>  
**Subject:** Meet and Confer Next Week

Richard,

Please let me know when you are free Monday or Tuesday of next week for an update call regarding discovery in the Grande matter.

Also, please provide as soon as possible a replacement production bearing the updated confidentiality designations of the Grande documents produced to date, as reflected in Judge Austen's order at Docket 59. In accordance with that order, we are treating all documents produced by Grande to date, including those attached as Exhibit A to our Opposition to the Motion for a Protective Order, as Confidential under the Protective Order.

Best Regards,

**Philip J. O'Beirne**  
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